

FILED  
COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON

IN RE:  
DEPUTY

LIA TRICOMO

Petitioner

STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION II

) PERSONAL RESTRAINT  
) PETITION  
)  
) RAP 16, ET SEQ.

A. STATUS OF PETITIONER

I, LIA YERA TRICOMO, apply for relief from confinement. I am now restrained pursuant of Judgement and Sentence in Thurston County Superior Court No. 13-1-00655-7. I was convicted of the crimes of Murder Second Degree, Assault Second Degree (3 counts), and Taking a Motor Vehicle without permission. I was sentenced after a plea of guilty, on the 28th day of January, 2015. The trial judge's name was Honorable Judge Gary Tabor. My trial attorney was Patrick O'Connor. His address is 1520 Irving St. Suite A, Tumwater, WA 98512. I appealed the decision of the trial court to Court of Appeals of State of Washington, Division II. My appeal attorney was Gregory C. Link. His address is 1511 Third Avenue, Suite 701, Seattle, WA 98101. The decision of the Appellate Court was not published. Since my conviction, I have not asked the court for some relief from my sentence other than I have already written above.

1 B. Grounds FOR RELIEF

I have 3 grounds for relief from my convictions.

Ground 1: Multiple assault convictions for the same crime violated protections from Double Jeopardy in both federal and state constitutions in the following ways:

- a) The State's description of the crimes I was convicted fail to show separate courses of conduct for sentencing purposes.
- b) "Aggravating factors" illustrated by the State clearly show a continuous chain of events.

Ground 2: There is evidence of egregious prosecutorial misconduct and ineffective assistance of counsel in obtaining of guilty plea.

- a) constructing a plea deal based on the presumption of mitigating and aggravating circumstances was an act of indiscretion by counsel and the state to obtain a guilty plea.
- b) Charging documents fail to include elements of the crime for Count III, Assault Second Degree as separate and distinct from other current offenses, and defendant was prejudiced by counsel oversight.

Ground 3: Did the court err in not considering the role prescribed medication attributed to the defendant's criminal acts?

## ARGUMENTS

Ground 1: Are my convictions a violation of both federal and state constitutional protections against duplicity?

The double jeopardy provisions of state and federal constitutions bar multiple convictions of the same offense where the unit of ~~prosecution~~ prosecution of a crime consists of course of conduct a person may not be separately convicted for acts within the same course of conduct.

In the Prosecution Sentencing Memorandum (see Attachment A), the state sought a high end sentence not on the grounds of the defendant's criminal history, but on the totality of the current offenses, pushing for the maximum of the range by the highlighting of "aggravating circumstances" for the crime of murder.

This multiplication of assault charges is a clear example of ~~multiple~~ multiplicity which is the charging of the same offense in more than one count which is prohibited in the Sixth and Fifth Amendment's infraction against double jeopardy. United States v. Kearney (1978, DC NR) 451 F. Supp. 33

In addition to this violation, the defendant suffers the punitive consequences of these convictions. The multiple assault convictions compounded the maximum sentence for the crime of murder in the second degree when they are counted as separate incidents. See State v. Womac, 160 Wn. 2d 643.

Citing RCW 9A.40A.400(1)(a) multiple crimes are to be treated as the same criminal conduct when: 1) The crime had taken place in the same time and location, 2) Involved the same

Victim, 3) Involved the same objective criminal intent.

State v. Waldon, 69 Wn. App. at 187-88.

As my case, the offenses of Count I, II, III, IV involved the same victim, occurred at the same place and had taken place simultaneously. See State v. Till, 139 Wn. 2d 123. The charges should be considered as a single course of conduct and remedied by the vacation of the crime of Assault Second Degree or recount the offender score ~~to~~.

recount all offenses as one course of conduct as follows:

current offenses

Count I Murder Second Degree 2

Count II Assault Second Degree 2

Count III Assault Second Degree 2

Count IV Assault Second Degree 2

Count V Taking a Motor Vehicle w/o permission 5

prior history

Count I Assault Third Degree (non-violent)

In this case, the division of assault offenses in the single course of conduct of murder is evident in the sequence of events described in the charging document. As described there was an initial assault, then a time period where the one who was assaulted was kept from leaving the location, then the resulting strangulation.

The prosecutor statements and assumptions support a string of continuous events (see Attachment A and B) which give evidence of duplicity in the multiplicity of

The United States Constitution guarantees that no person shall be subjected for the same offense to be twice put in jeopardy of life or limb, pursuant to U.S. Const. amend V. The double jeopardy clause of the Washington State constitution guarantees that "No person shall be twice put in jeopardy for the same offense pursuant to Wash Const. art I, Section 9. The Fifth Amendment jeopardy clause of the U.S. Constitution encompasses 3 separate constitutional protections: it protects against a second prosecution for the same offense after acquittal. It protects against multiple punishment for the same offense. In both the multiple punishment and successive prosecution context, double jeopardy applies if the two offenses for which a defendant is punished or tried cannot survive the "same element" test. State v. Goebe, 127 Wn. 2d 95, 107, 896 P.2d 1267 (1995).

The multiple assault convictions counted as separate incidents compound the maximum sentence to a high offender score of 8 which counted separately effectively compounds the punishment for essentially one course of conduct. The criteria established in the case of Blockburger is satisfied when taken into account the consistency of the assault offenses of counts I, II, III, IV that are changed which all lack any additional provision besides differing rooms in the same house (which are in the same location) and a lapse in time between attacks which are contradicted by prosecutor statements and assumptions supporting a continuous string of events (see sentencing

Hearing 1/28/15 p. 47 Attachment A).

In the case of State v. Dolan (83 Wn App 364) the definition of course of conduct was defined by his intent, within the period of a year, committing sex crimes against his child, resulting in a number of separate offenses which resulted in sexual intercourse. Likewise in the instant case, the assaults which took place in the course of one evening counted separately should be consolidated in the offender score. In the case of State v. Dolan there was no question posed as to whether he had enough time to reconsider his actions within the year of committing repeated rapes.

Ground 2: Did the state and counsel respectively engage in prosecutorial misconduct and conspiracy to obtain a guilty plea?

Amendment VI give provisions for the right to effective assistance of counsel and those are in turn given in Wash. Const. art I, Section 22, which extends to the plea bargaining process. Lafley v. Cooper, 566 US 156, 162, 132 S Ct 1376, 182 L. Ed. 2d 398 (2012). "A defendant is denied effective assistance when his attorney's conduct 1) falls below a minimum standard of reasonable attorney conduct and 2) there is a probability that the outcome would be different but for the attorney's conduct." State v. Benn, 12 Wn. 2d 631, 663, 845 P2d 289.

Under the same provision the due process clause of the VI & XIVth amendments impose upon the state an

implied promise to act in good faith in plea agreements.  
Sludge 133 Wn. 2d at 838-39.

It is my claim that the prosecutor & counsel acted in conspiracy to obtain a guilty plea in creating a plea agreement for the top of the range, knowing there was no legal basis for the trial court to consider mitigating circumstances to go below the recommended sentence.

The defendant entered a guilty plea for a sentence within the standard range under the stipulation that the court consider mitigating circumstances given by expert testimony.

As evidenced in page 4 of Statement on Plea of Guilt under (g) (Attachment C) that I was not agreeing to 367 months, and that under this agreement the \*Defense was free to argue for a lesser sentence. The contact developed for the court to decide between possible "aggravating" and "mitigating" factors of the case to determine the appropriate sentence. However, it was stated by the court in Sentencing Hearing page 40 Attachment D that neither were going to be considered because neither was asking for an exceptional sentence. However, under the plea agreement the prosecutor made implications for a crime more egregious than a typical crime of the same class, which effectively undercut any possibility for leniency in regards to sentencing. See state v. Caceres-Maldonado 135 Wn. App 77 (2006).

18

The open sentence was offered on the condition of a plea of guilty for the consideration of the weighing of potential "aggravating" and "mitigating" factors. If the plea was signed under these conditions would this be an act of indiscretion on the part of the counsel and the state? Because the stipulations drawn by the state could not be supported by law, the plea cannot be valid.

Another aspect in which I was prejudiced by ineffective counsel and prosecutorial misconduct was the inclusion of Count III, Assault in the Second Degree for facial wounds. It is a charge which is not assigned to any event of the evening in which the crimes had taken place. In the declaration of Prosecutor Supporting Probable Cause (Attachment B) and Sentencing Memorandum (Attachment A) there is no distinct mention made for facial wounds as a separate act. The same evidence test suggest that Count III is a conviction that is identical both in fact and in law to one or both current assault offenses if not done in the course of murder. See State v. Calle (25 Wn. 2d 777) (citing Johnson 96 Wn. 2d 933; State v. Roybal 82 Wn. 2d 577, 582, 512 P. 2d 918).

It is very clear that the elements necessary to make Count II Assault in the Second Degree a separate course of conduct are not included or by fair construction be found in the charging document. The guilty plea and conviction to this charge is a violation of the double jeopardy clause of both the Washington State and U.S. Constitutions. IN Blockburger:



"The test of existence where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision required proof of an additional fact which the other does not. (Block v. United States 284 US 304 76 L 2d 306, 525, ct. 180 (1932))

The additional facts simply are not there. Defense counsel failed to realize the impact that this additional charge had, in multiplying the offender score. As a result, the defendant was prejudiced by counsel's ineffective assistance which fell below a minimum objective standard of reasonable attorney conduct. That failed to be of assistance in defending me against egregious prosecutorial misconduct.

Without element of time, location, or intention given for the additional charge I am prejudiced by this conviction. The U.S. Const. amend. VI provides that in all criminal prosecutions the accused shall be informed of the nature and cause of the accusation. Wash. Const. art I section 22 (amend. X) provides that in criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation against him. State v. Michael 166 Wn. App. 525, State v. Vangerpen 125 Wn. 2d 787, State v. Gjorsvic 17 Wn. 2d 88

Ground 3: Did the trial court err in not considering the rule that prescribed medication attributed to the defendant?

The mitigation report given by the defense's expert included in the Defense Sentencing Brief (filed 1/21/2015) cites peer reviewed scientific journals about the violent side effects of Paxil and SSRIs which was a key factor in the challenge of diminished capacity during the conduct of crimes as outlined by the defense's psychologist (see Attachment F)

The legal findings of Paxil's effects can be found in a verdict upheld against SmithKline Beecham Pharms based on expert opinion stating that the drug Paxil caused the decedent's homicidal and suicidal behavior. Tobin v. SmithKline Beecham Pharms 164 F. Supp. 2d 1278 (2001). A diminished capacity defense requires evidence of a mental condition, which prevents the defendant from forming the requisite intent necessary to commit the crime charged. State v. Warden, 133 Wn. 2d 599, 564, 947 P.2d 708 (1997). An intoxication defense allows consideration of the effect of voluntary intoxication by alcohol or drugs on the defendant's ability to form the requisite mental state. State v. Coates, 107 Wn. 2d 822, 889, 735 P.2d 64 (1987). In this case it is undisputed that the defendant drank vodka provided by the victim while experiencing psychotic symptoms which were further compromised by the dangerous side effects of prescribed medication. The oversight of this factor is a violation of due process protected by Amendment XIV of the U.S. Constitution.

# ATTACHMENT A

1 where the victim was found lying face down on the bed with his legs hanging off the bed. There  
2 was a green extension cord wrapped around his neck. The victim's fingers were wrapped in the  
3 extension cord as though he had been trying to pull the cord from his neck prior to his death.

4 During the investigation law enforcement made contact with the defendant who admitted  
5 that she had killed John Alkins and she provided law enforcement a confession to the crime.

6 During her confession the defendant stated that on the day of the murder she had been drinking.

7 After dinner she and the victim had exchanged oral sex and then they moved to the bedroom  
8 with the intent of further sexual activity. The defendant told law enforcement that prior to going  
9 upstairs she had hidden a razor blade knife near the head of the bed with the intent to kill John  
10 Alkins. When asked why she wanted to kill him, the defendant responded, "He was a creep." The  
11 defendant further stated that while the victim was in the bed she pulled out the razor knife and  
12 cut Alkin's throat at least 6 times. Alkin's asked why she was trying to kill him and he then told  
13 her to go her room (to get her away from him). The defendant refused to leave the victim's room  
14 because she wanted to sleep with him. According to the defendant at this time the victim began  
15 to try to stop the bleeding and was walking around the house. While this was happening the  
16 defendant was taunting the victim and following him around the house to make sure he wasn't  
17 able to leave. At no point did the defendant try to assist the victim or help to stop the bleeding.  
18 Further, when Alkin's approached the front door he tried to take the knife away from the  
19 defendant she then cut his wrist. The defendant stated that at some point the victim went upstairs  
20 and laid on the floor bleeding for hours while she watched. Eventually, the defendant grabbed  
21 the extension cord and wrapped it around the victim's neck strangling him. The defendant then  
22 drank more alcohol and went to bed. The defendant awoke at approximately 12:00 PM the next  
23 day, went in to make sure the victim was dead, went downstairs and ate, went and checked the  
24  
25

# ATTACHMENT B

J

1 was a large section of red nylon rope on the floor, which appeared to have several knots tied in it.

2 Det. Simper learned that Tricomo was currently at St. Peters hospital in their mental health area. Detectives King and Simper responded to contact her. Prior to contacting  
3 Tricomo, Det. Simper contacted DR. Tim Zola who was the DR. on duty at the time of Tricomo's arrival. While speaking with DR. Zola, Tricomo stated that she needed to turn  
4 herself in. She went on to tell DR. Zola that she had stabbed a man the previous evening. She stated that the man was her former counselor at BHR. She admitted to DR. Zola that she had  
5 moved in with the man the day prior and had stabbed him after some form of sexual contact.

6 Detectives King and Simper contacted Tricomo. She was lying on a bed in the mental health section of the hospital. Detective King transported Tricomo in his vehicle to the TCSO Jail. Tricomo was advised that she was being audio and video recorded and she agreed. Det.  
7 Simper read Tricomo her Miranda Warning from a department issued card and she stated that she understood her rights and she agreed to speak with Det. Simper regarding the incident.  
8 Tricomo stated that she met Alkins at BHR, where he was her counselor. She stated that they socialized while he was employed there however he was terminated several months ago due  
9 to an inappropriate relationship with another patient. During the last six months, she and Alkins remained in contact by phone. Recently, Alkins offered to let her move in with him  
10 and Tricomo moved in on the morning of 04/29/13. She agreed to pay rent to Alkins and split other expenses.

11 On the afternoon of 04/29/13, Alkins purchased Tricomo a bottle of vodka. She began drinking in the late afternoon hours. At approximately 1800 hours, Alkins began touching  
12 Tricomo's breasts. He told her that he wanted to do it, "family style." To her this meant to role play an incestuous relationship between a father and daughter. As he fondled her breasts  
13 he was calling her "baby girl." Alkins removed Tricomo's pants and began licking her vagina. Tricomo then gave Alkins oral sex. Tricomo stated that the sexual contact was unwanted but  
14 she never told Alkins no. Tricomo continued to drink vodka. Later in the evening, Tricomo asked Alkins if he wanted to be tied up. They went upstairs and Tricomo attempted to tie  
15 Alkins up with the red nylon rope. She stated that he was naked but she was clothed. Alkins stated that he did not like being tied up so she untied him. She did state that prior to tying him  
16 up, she grabbed a folding razor blade knife out of her room. She hid it next to the head of the bed. After she untied Alkins, Tricomo grabbed the razor knife and slit his throat  
17 approximately 6 times. She admitted that she tied up Alkins and hid the knife as preparation to kill him. When asked why, she stated that he was a creep.

18 Tricomo stated that after she slit Alkins' throat he walked around the house trying to stop the bleeding for what she described as hours. He refused to call for help because he did  
19 not want to get in trouble for having a former client in his residence. Tricomo admitted to following Alkins around in the house to make sure he didn't leave. She stated that there was a  
20 struggle for the knife downstairs near the front door. Alkins tried to take the knife away but she cut his wrist as he did so. Alkins eventually went upstairs and was lying on the floor  
21 bleeding. She stated that she grabbed a green extension cord, wrapped it around his neck, crossed it and pulled to strangle him. Tricomo stated that she then drank more vodka and went  
22 to bed.

23 On 04/30/13 at approximately 1200 hours, Tricomo awoke. She went in and checked on Alkins before going downstairs to eat. She then used his computer and tried to access his

DECLARATION OF PROSECUTOR  
SUPPORTING PROBABLE CAUSE - 2

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ATTACHMENT - C

During the period of community custody I will be under the supervision of the Department of Corrections, and I will have restrictions and requirements placed upon me, including additional conditions of community custody that may be imposed by the Department of Corrections. My failure to comply with these conditions will render me ineligible for general assistance, RCW 74.04.005(6)(h), and may result in the Department of Corrections transferring me to a more restrictive confinement status or other sanctions.

If I violate the conditions of my community custody, the Department of Corrections may sanction me up to 60 days confinement per violation and/or revoke my earned early release, or the Department of Corrections may impose additional conditions or other stipulated penalties. The court also has the authority to impose sanctions for any violation.

- (g) The prosecuting attorney will make the following recommendation to the judge: 357 months on count I, 70 months on counts II, III, IV, 12 months on V, all to be served concurrent, standard legal financial obligations \$500 crime victim, \$200 filing fee, \$100 DNA
- ☐ The prosecutor will recommend as stated in the plea agreement, which is incorporated by reference.

*\* Defense is free to argue for a lesser sentence*

- (h) The judge does not have to follow anyone's recommendation as to sentence. The judge must impose a sentence within the standard range unless the judge finds substantial and compelling reasons not to do so. I understand the following regarding exceptional sentences:

- (i) The judge may impose an exceptional sentence below the standard range if the judge finds mitigating circumstances supporting an exceptional sentence.
- (ii) The judge may impose an exceptional sentence above the standard range if I am being sentenced for more than one crime and I have an offender score of more than nine.
- (iii) The judge may also impose an exceptional sentence above the standard range if the State and I stipulate that justice is best served by imposition of an exceptional sentence and the judge agrees that an exceptional sentence is consistent with and in furtherance of the interests of justice and the purposes of the Sentencing Reform Act.
- (iv) The judge may also impose an exceptional sentence above the standard range if the State has given notice that it will seek an exceptional sentence, the notice states aggravating circumstances upon which the requested sentence will be based, and facts supporting an exceptional sentence are proven beyond a reasonable doubt to a unanimous jury, to a judge if I waive a jury, or by stipulated facts.

If the court imposes a standard range sentence, then no one may appeal the sentence. If the court imposes an exceptional sentence after a hearing, either the State or I can appeal the sentence.

- (i) If I am not a citizen of the United States, a plea of guilty to an offense punishable as a crime under state law is grounds for deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.



# ATTACHMENT D

1 going to allow the report of Diana Fernandez, but I  
2 want to make clear the purpose of my allowing that.  
3 There is at the defense sentencing brief,  
4 Attachment B, first a declaration. That declaration  
5 indicates that Ms. Fernandez has been often retained  
6 as a mitigation specialist in a death penalty case  
7 situation. I recognize the State's argument a moment  
8 ago that that's substantially different than what  
9 we're facing here today for a number of reasons.

10 So what I want to make clear is that I'm going to  
11 consider the background information about Ms. Tricomo  
12 that's provided in Ms. Fernandez' report. I am,  
13 however, disregarding the section that appears at  
14 page 4 of her report. It begins there regarding  
15 Paxil. I don't find that she has any expertise in  
16 that particular area and she basically only sets  
17 forth a number of articles suggesting that they may  
18 have some relevance, but I'm not considering her  
19 report in that regard, nor am I considering any  
20 opinion that might be contained here about what this  
21 Court should or should not do as far as sentence.  
22 I'm not sure that there is any such, but if there  
23 were I'm not considering that.

24 I want to make it clear that I'm only considering  
25 what she has to say as background. I have background

1 from a number of different sources. I'm well aware  
2 that the parties at the time that the plea was  
3 entered in this case agreed that they would each  
4 recommend a sentence within the standard range. I'm  
5 aware of the standard range, so we are not taking  
6 about a situation where mitigation would be  
7 considered to suggest a sentence below the standard  
8 range.

9 In like manner, we are not in a situation to  
10 consider any circumstances as, quote, aggravating  
11 circumstances, closed quote, that would result in a  
12 sentence above the standard range. The laws of the  
13 State of Washington are quite clear that as to  
14 aggravating circumstances there are only certain  
15 circumstances a court could consider as aggravators  
16 absent a specific filing by the State to seek  
17 aggravating circumstances and a finding by a jury,  
18 and, of course, we don't have that.

19 So I say all that to say that we're going to move  
20 forward for the sentencing here in just a moment,  
21 that I will hear from both sides. It's my  
22 understanding that there may be people that choose to  
23 speak on behalf of the victim or victim family here.  
24 Could you tell me how many folks you believe are  
25 going to speak in that regard?

1 case at both the doors and the windows and at least  
2 one window of the house, support that the defendant  
3 prevented John Alkins from leaving the house.

4 The defendant admits that when John Alkins tried  
5 to take the knife away from her, she cut his wrist.  
6 The blood evidence supports that there was a struggle  
7 in the kitchen. The autopsy report indicates that  
8 John Alkins had many knife wounds, some were  
9 superficial, some were more significant. This is  
10 evidence that the defendant continued to slice John  
11 Alkins' body even after she had cut his throat  
12 several times. And despite the fact that John Alkins  
13 was bleeding, she continued to cut him. There was no  
14 reason to continue cutting him except to continue to  
15 torture an already injured man.

16 The defendant admits she did nothing to stop the  
17 bleeding or to try to help John Alkins. Instead, she  
18 followed him around the house taunting him,  
19 preventing him from leaving, and continuing her  
20 torture by cutting him further. According to the  
21 defendant, she watched him bleed for hours. In fact,  
22 she told detectives that she was waiting for him to  
23 die. Certainly, the cruelty that the defendant doled  
24 out to John Alkins in his last hours warrant a  
25 high-end sentence.

ATTACHMENT €

charge. She reports that he was ordered by the Court to monitor her. "He didn't want to be behind his desk. He explained that he didn't believe in a 'regular' way to do therapy. He wanted to do 'hands-on.' He shared that he was also a musician and we could play music. During the sessions he touched my face and thigh—that bothered me. We'd walk long distances on a trail; he'd bring drums. We had very long sessions, and he mostly talked about himself. He told me I could not stop continuing to see him for 'therapy.' He thought I was stupid. He encouraged me to break up with my boyfriend."

She continues, "During our sessions I felt trapped. He was being investigated for inappropriate sessions with clients. It didn't surprise me. When I stopped seeing him, I feared he'd put me back in jail again, or send me to a mental institution."

"Nine months later, I called him on the phone. He had been texting me. I had his amplifier and I wanted to give it back to him, and he had a book of mine I wanted back. He continued to text me, and called a lot on the phone."

"I was getting kicked out of a room I was renting. He wanted to see me." She stated that, initially, she decided she did not want to see him at his home. "We did have a recording session once after he got fired. Then I lost my phone and his number. I didn't look him up. It was a one-way relationship. He was getting all the gratification. He was like a big burden."

Ms. Tricomo further explained about the history of her relationship with the victim. "I had to go to the sessions; they were Court-ordered. I had to be his friend. I was stuck to be there for 2 to 3 hours. I was too nice and scared to say no. I didn't want to hurt his feelings. He said I was really special. It was good for me to be nice. I hadn't seen him after he was placed on administrative leave. Again, I lost his phone number."

### CIRCUMSTANCES OF THE ALLEGED CRIME

Ms. Tricomo reports, "Around the end of March 2013 he started calling me again, a lot. This was after I had called him. He wanted continuously (every day) to get together. He came and picked me up. He took me to his place and it looked like real nice. His place was near a bus stop. I could practice there for an audition that was coming up. We had a jam session. I was starting to draw scary things. This started when I was on Paxil. It had been prescribed one month earlier. I began drawing with an urge. I used a lot of color. All of a sudden I could draw easily, but it made me disconnected from my music. I had lost all feeling."

"It all started when he turned the music on really loud. We had drunk a lot of vodka. I got really irritated. We were eating dinner and drinking beers. He got herbs from his garden, and he put marijuana into the red sauce. That bothered me. He started talking about the arrangement for me to live with him. He wanted to do it 'family style.' I felt I had no way out of there. It was hopeless, and I felt like I was at a dead end. He started

touching me, and I really did not want to be touched. I felt powerless. It reminded me of times when I was being molested."

"Suddenly I envisioned myself tying him up. I now had a smile on my face with a chaotic mood swing. I felt like God. I asked him if he wanted to be tied up, and that I was really into that. He said he was into 'golden showers.' He was really drunk. He told me he wanted to do it 'daddy-daughter style.'"

"I had a lot to drink also, but wasn't as drunk as him. It didn't affect me the way it did him, because of the Paxil, I think." She clarified that it had been approximately 12 hours since her last dose earlier that day around 3:00 pm. (the day prior to her arrest). "When I missed a dose, I would become very aggressive and explosive."

"I followed him to the kitchen. He wasn't trying to get out. He was so drunk. We had a struggle at the front door. He tried to take my box cutter away from me. I got it back. He went back upstairs, put his clothes on, and told me to go to bed. He was telling me I couldn't sleep in his bed. I felt really put off (rejected). I told him I wanted to sleep with him, and he told me to go to sleep in my own bed. I grabbed an extension cord and strangled him. I asked him why he had not looked for help. I was unreal, sort of like a dream. I felt like I had to kill him to put him out of his misery."

#### **FORMAL MENTAL STATUS EXAMINATION & BEHAVIORAL OBSERVATIONS**

Ms. Tricomo arrived promptly for her examination on February 15, 2014, escorted by a corrections staff member. She is an attractive, bright and articulate woman. She appeared her stated age, a 28-year-old Asian female of average build. She was dressed in a jail-issued gray jumpsuit with ankles and wrist shackles. She had several distinctive tattoos on her skin depicting horned beasts, and multiple gray skulls outlined by heavily colorful flowers on her right arm. She was wearing a plastic wrist bracelet with picture identification. Her hygiene and grooming appeared to be within normal limits.

The prisoner was alert and oriented. Her demeanor was pleasant and mild-mannered. Her eye contact was fair, though she would frequently look down. At times, her glance was "far off," as if she was internally preoccupied, and this examiner needed to repeat a few questions over the course of the interview; she is highly distractible. She was open and cooperative, but exhibited frequent and short periods of tearing up. She was quiet and reserved, constantly moving back and forth in a slow rocking motion throughout most of the interview. Her speech characteristics were unremarkable, although her speech volume was low. She described her typical mood as depressed and sad. "I feel worthless." Her mood appeared somber, consistent with her stated mood, and her affect was mostly blunted and restricted. She verbalized suicidal ideation. "I want to kill myself all the time." She did not verbalize any suicidal or homicidal plans or immediate intent to harm herself or other. Please refer to the report of her extensive suicidal history above.

	Major Depressive Disorder, recurrent, with psychotic features	296.34
	Bipolar Disorder II	296.89
	Posttraumatic Stress Disorder	309.81
Axis II:	[Personality Disorders]	
	Borderline Personality Disorder	301.83
	Antisocial Personality Disorder	301.7
Axis III:	[Medical Conditions]	
Axis IV:	[Psychological Stressors]	
Axis V:	[General Assessment of Functioning] - 45	

## CONCLUSIONS AND DISCUSSION

Ms. Tricomo is prone to extremely violent and homicidal ideation with intermittent aberrant behavioral "follow-through" when she perceives violations by others. She seems appropriately insightful and afraid of her aggressive impulses. Psychodynamically, these are redirected toward the childhood and historic violations she endured at the hands of abusive others, including her father.

Historically, she has been adversely motivated to desperately attempt to "change her consciousness" by overdosing and abusing psychoactive chemicals, beginning early at age 12. She struggles with prominent feelings of hopelessness and worthlessness with dysfunctional impulsive behaviors. She has appropriately been diagnosed and treated for many years for Borderline Personality Disorder, described above. This has been complicated by an affective disorder described as Major Depression, Recurrent with Psychotic Features, and Bipolar Disorder. Cannabis and alcohol dependency have further complicated matters, as has acute Paxil (prescribed SSRI antidepressant) usage followed by withdrawal over 12 hours prior to the alleged crime.

In conclusion, this is a very complicated case. Nevertheless, all contributing factors described above indicate mental and cognitive impairment to form the requisite intent to the crime she is charged with committing. Additionally, the above described symptoms of Bipolar Disorder played a major role regarding her intent. She experienced transient stress-related paranoia and severe dissociative symptoms lasting a few hours (as defined by the



DSM-V) leading up to the alleged crime. If the trier of fact were not to agree, I believe there are very significant issues to be considered regarding mitigating circumstances.

### Diminished Capacity

The diminished capacity defense has existed in Washington since 1925 (State v. Beyers, 136 Wn. 620) (1925). Washington felonies involve as an element the requisite mental state required to commit the crime. RCW 9A.08.010(1) lists four possibilities: intent, knowledge, recklessness, or criminal negligence. Most diminished capacity defenses are aimed at negating either "knowledge" or "intent".

In a diminished capacity case the State has the burden to prove the defendant formulated the appropriate mental element, beyond a reasonable doubt, as opposed to a defense of insanity, in which the defendant has the burden of proving he was insane at the time of the incident by a preponderance of the evidence (McAllister v. Territory, 1 Wn. Terr. 360 (1872)). Furthermore, if the defendant prevails in an insanity defense he is likely to be sent to a state mental hospital for treatment, and may be held in the hospital as a patient for up to as long as the maximum sentence for the crime charged.

However, if the defendant prevails in a diminished capacity defense, he will either be acquitted outright, or will be convicted of a lesser degree of offense than the one charged. Finally, an insanity defense requires that the reason for the incapacitation be a "mental disease or defect", but any incapacitating factor can be used in a diminished capacity defense, including voluntary intoxication (State v. Norby, 20 Wn. App. 378 (1978); RCW 9A.16.090). For all of these reasons the diminished capacity defense has become more commonly utilized than the insanity defense.

### Mental Illness

At the time of the alleged crime, Ms. Tricomo suffered the following mental states contributing to her diminished capacity:

- Failure to Accurately Assess Reality
  - a. Voluntary Intoxication – Vodka, an "entire bottle" at the time of the alleged crime may have diminished her ability to form intent. It is likely that she was functioning with an alcoholic blackout or grayout.
  - b. Use of and withdrawal from Paxil at the time of the alleged crime may have diminished her ability to form intent, a requisite mental state. Paxil withdrawal exacerbated her mood disorder into a manic state with psychosis.
  - c. PTSD from extensive childhood trauma.
  - d. Borderline Personality Disorder
- Decreased ability to Inhibit Impulses
  - a. Paxil and Vodka

# Table of Authorities

U.S. Const. VI, VII, XIV

Wash. Const. Art. I, section 9

Wash. Const. Art. I, section 22

## Washington Case Law

State v. Worner, 160 Wn. 2d 643

State v. Waldon, 69 Wn. App. at 187-88

State v. Gochen, 127 Wn. 2d 95, 167 896 P.2d 1267

State v. Calle, 125 Wn. 2d 777

State v. Johnson, 96 Wn. 2d 933

State v. Paybar, 82 Wn. 2d 577, 582, 512 P.2d 171

State v. Michael, 160 Wn. App. 525

State v. Vangerpen, 125 Wn. 2d 787

State v. Gjorvick, 117 Wn. 2d 88

State v. Warden, 133 Wn. 2d 559, 564, 947 P.2d 708

State v. Coates, 107 Wn. 2d 822, 889, 735 P.2d 64

State v. Dolan, 83 Wn. App. 364

State v. Benn, 120 Wn. 2d 631, 663, 843 P.2d 289

State v. Sledge, 133 Wn. 2d at 838-39

State v. Gernano-Maldonado, 135 Wn. App. 77

## Federal Case Law

United States v. Kearney (1978, DC NY) 451 F. Supp. 33

Blockburger v. U.S., 284 U.S. 304 76-2d 306, 525 Ct. 180

Tobin v. Smith-Kline Beecham Pharm. 164 F. Supp. 2d 1278

## State Law

Rev. 9.94 A.400 (1)(a)

## Statement of Finances

I do ask the court to file this without making me pay the filing fee because I am so poor I cannot pay the fee.

I have \$50 in my prison account.

I ask the court to appoint a lawyer for me because I am so poor I cannot afford to pay a lawyer.

I am not employed.

During the past 12 months I did not get any rent payment. I did not get any interest. I did not get any dividends. I did not get any other money. I did not have any cash except as said in answer 2. I did not have any savings accounts or checking accounts. I did not own stocks, bonds, or notes.

## Request for RELIEF

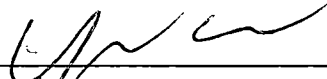
For the above reasons I petition to withdraw my plea of guilty, to have current convictions merged or vacated, and to have my offender score recalculated.

E. OATH OF PETITIONER

THE STATE OF WASHINGTON )  
COUNTY OF PIERCE ) ss.

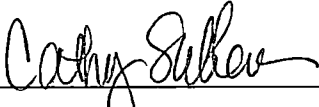
After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents, and I believe the petition is true.

Dated: 12/28/2017

  
Signature  
LIA YERA TRICOMO 348594  
Name DOC  
Washington Correction Ctr. for Women  
9601 Bujacich Rd NW  
Gig Harbor WA 98332

THE STATE OF WASHINGTON )  
COUNTY OF PIERCE ) ss.

I certify that I know or have satisfactory evidence that TRICOMO, LIA  
(348594) also known as Tricomo, LIA is the individual that appeared before me and said individual acknowledged that it was her free and voluntary act for the use and purpose of this instrument.

Dated: 12/28/2017 

Notary Public in and for the State of Washington

My Commission Expires: NO expiration

**Records and Identification Officer**  
**Washington Corrections Center for Women**  
**Authorized Officer Pursuant to**  
**RCW 64.08.090**  
Residing at Gig Harbor, WA.